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SUPREME COURT, U.S.

No. 98-47

In The

Supreme Court of the United States

October Term, 1997

WILLIAM DOYLE WOOD,

Petitioner,

vs.

THE CITY COUNCIL OF MANASSAS, VIRGINIA; BOARD OF SUPERVISORS OF PRINCE WILLIAM COUNTY and THE MANASSAS REGIONAL AIRPORT ADMINISTRATION BOARD,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Virginia

BRIEF IN OPPOSITION FOR RESPONDENTS THE CITY COUNCIL OF MANASSAS, VIRGINIA AND THE MANASSAS REGIONAL AIRPORT ADMINISTRATION BOARD

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PARTIES TO THE PROCEEDING

The petition accurately lists the parties to this proceeding.

Issues regarding whether the plaintiff below had standing to sue the parties he did were raised as part of defendants' Plea in Bar and Demurrer. The Manassas Regional Airport Administrative Board is made up of individuals appointed by the City Council. The City Council of the City of Manassas, Virginia and the Airport Board are immune from prosecution in their individual capacities under the doctrine of sovereign immunity. *Messina v. Burden*, 223 Va. 301, 321 S.E. 2d 657 (1984). These issues were not decided by the Circuit Court.

TABLE OF CONTENTS

	Page
Parties to the Proceeding	i
Table of Contents	ii
Table of Cited Authorities	iii
Statement of the Case	1
A. The Petition Fails To Disclose A Critical Element Regarding The Disposition Of This Matter.	2
B. Petitioner's Reliance On *First Lutheran Church v. Los Angeles* Is Misplaced. The Preliminary Activities Undertaken To Study The Feasibility Of Expanding The Airport Did Not Constitute A Taking That Was Either Temporary or Permanent.	2
Reasons for Denying the Writ	4
Conclusion	5

TABLE OF CITED AUTHORITIES

Cases Cited:

Page

Agins v. Tiburon, 447 U.S. 255, 100 S. Ct. 2138, 65 L. Ed. 2d 106 (1980) 3, 4

Arlington Yellow Cab v. Transportation, Inc., 207 Va. 313, 149 S.E. 2d 877 (1966) 4

Board of Supervisors of Prince William County v. Omni Homes, 253 Va. 59 481 S.E. 2d 460 (1997) 4

Danforth v. United States, 308 U.S. 271, 60 S. Ct. 231, 84 L. Ed. 240 (1939) 3

First English Evangelical Lutheran Church v. Los Angeles, 482 U.S. 304, 104 S. Ct. 2378, 96 L. Ed. 2d 250 (1987) 2, 3, 4

Jones v. Miller, 2 Va. Dec. 232, 23 S.E. 35 (1882) ... 2

Messina v. Burden, 223 Va. 301, 321 S.E. 2d 657 (1984) i

Virginia - Carolina Rwy Co. v. Booker, 99 Va. 633, 39 S.E. 591 (1901) 2

STATEMENT OF THE CASE

The Petitioner, William Doyle Wood, was formerly the owner of property located in Prince William County, Virginia, near the municipal airport for the City of Manassas. In February 1996, Wood filed a Bill of Complaint for declaratory judgment, injunctive and other relief in the Circuit Court for Prince William County, Virginia. This suit was filed against the City Council of Manassas only. The City Council filed a Demurrer to the Complaint and prior to its being heard by the Circuit Court, Wood nonsuited the case.

Subsequent to that time, the property in question was foreclosed upon by Wood's creditors and he no longer owned the property at the time that the action, which is the subject matter of this Petition, was filed.

Wood initiated a Motion for Judgment, Petition for Inverse Condemnation and for Declaratory Judgment in June 1997 against the City Council of Manassas, Virginia, the Board of Supervisors of Prince William County and the Manassas Regional Airport Administration Board. This suit alleged, among other things, that activity undertaken by the City Council to determine whether the airport runway should be expanded constituted a taking of his property. The activity undertaken included various studies relating to the creation of a noise overlay district and the initiation of the Federal Aviation Administration application process to determine whether such an extension of the runway was feasible, warranted or made economic sense.

Wood claimed that such activity constituted a taking of "all use" of the property which amounted to inverse condemnation entitling him to compensation.

The demurrer of the City Council of Manassas and the Manassas Regional Airport Administration Board and the demurrer of Prince William County were granted and the case was

dismissed. Wood petitioned the Supreme Court of Virginia for a Writ granting Wood's appeal to that court. On April 3, 1998, the Virginia Supreme Court declined to grant the requested Writ. This Petition for Writ of Certiorari follows.

A. The Petition Fails To Disclose A Critical Element Regarding The Disposition Of This Matter.

The Petition does not disclose to this Court that Wood was not the owner of the property in question at the time he brought the present suit in the Circuit Court for Prince William County, Virginia. Accordingly, it was the position of the defendants in the actions below that Mr. Wood lacked standing to bring an inverse condemnation proceeding. The general rule of Virginia is that only the owner of a parcel of property has standing to claim that the property has been taken from him. *Virginia - Carolina Rwy Co. v. Booker,* 99 Va. 633, 39 S.E. 591 (1901); *Jones v. Miller,* 2 Va. Dec. 232, 23 S.E. 35 (1882). Wood admits in his motion for judgment that he was unable to make the mortgage payments on the property and as a consequence, the property was foreclosed upon. (Motion for Judgment para. 53).

This fact was set out in the Respondents' brief at both the Circuit Court level and before the Virginia Supreme Court. It was a factor presumably relied upon by both courts in their decisions dismissing Wood's suit and appeal.

B. Petitioner's Reliance On *First Lutheran Church v. Los Angeles* Is Misplaced. The Preliminary Activities Undertaken To Study The Feasibility Of Expanding The Airport Did Not Constitute A Taking That Was Either Temporary or Permanent.

The case presented by Petitioner in the instant matter is vastly different from the factual context within which this Court reviewed *First English Evangelical Lutheran Church v. Los Angeles*, 482 U.S. 304, 104 S. Ct. 2378, 96 L. Ed. 2d 250 (1987), despite

Petitioner's assertions to the contrary. In that case, this Court determined that the Los Angeles County ordinance which prohibited the church from rebuilding on a flood plain was a compensable taking. The Court found that there was at least a temporary taking because all use of the property was prohibited by the ordinance, even though the ordinance was later repealed. *Id.* 482 U.S. at 321-322.

In the instant case, the Petitioner was not deprived of any use of his property because all the City of Manassas did was engage in preliminary studies to determine the feasibility of expanding the airport. Wood's use of his property continued despite his conclusory allegations to the contrary. The activity undertaken is squarely within the ruling in *Danforth v. United States*, 308 U.S. 271, 60 S. Ct. 231, 84 L. Ed. 240 (1939) and *Agins v. Tiburon*, 447 U.S. 255, 100 S. Ct. 2138, 65 L. Ed. 2d 106 (1980) which determined that preliminary activity designed to determine the feasibility a possible future exercise of eminent domain did not constitute a taking. In *Agins*, this Court held that precondemnation activities, including the initiation of eminent domain proceedings did not amount to a taking. The Court went on to state:

> Even if the appellants' ability to sell their property was limited during the pending of the condemnation proceeding, the appellants were free to sell or develop their property when the proceedings ended. Mere fluctuations in value during the process of governmental decision making, absent extraordinary delay are "incidents of ownership. They cannot be considered a 'taking' in the constitutional sense." (citations omitted)

Id. 447 U.S. at 263, n.9.

REASONS FOR DENYING THE WRIT

The petitioner's naked, unsupported and conclusory allegations in his Motion for Judgment that he was deprived of all use of his property are not sufficient to escape dismissal because the activities undertaken by the City Council of Manassas and the Airport Board appointed by it were preliminary in nature and the facts substantiating this determination were fully set out in the statement of facts in Wood's initial pleadings. That Wood alleged that the preliminary activity constituted a "taking" is not sufficient to create a viable cause of action where the facts in the Motion For Judgment clearly indicated that there was no taking of property. An allegation which merely states a conclusion at law is demurrable under Virginia Law. *Arlington Yellow Cab v. Transportation, Inc.*, 207 Va. 313, 149 S.E. 2d 877 (1966). The Circuit Court properly held that the activities in question could not possibly amount to a taking despite the conclusory allegations. See, *Agins v. Tiburon, supra. First Evangelical Lutheran Church v Los Angeles* is clearly not applicable to the fact pattern set forth in this matter.

Moreover, that Wood failed to make his mortgage payments and therefore caused the foreclosure of his property cannot be laid at the feet of the City of Manassas. Had Wood held his property and made the payments he was required to make, regardless of any activity taken in regard to the airport, he would have been eligible to recover in condemnation proceedings if the City of Manassas ever determined to expand the airport. This he did not do and his failure to act cannot become the responsibility of local government. *See Board of Supervisors of Prince William County v. Omni Homes*, 253 Va. 59 481 S.E. 2d 460 (1997).

CONCLUSION

For the reasons stated herein and for those set forth by Prince William County in its Brief In Opposition, which are incorporated herein by reference, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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